

AMENDED IN ASSEMBLY MAY 3, 2004

AMENDED IN ASSEMBLY APRIL 16, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1946

Introduced by Assembly Member Steinberg

February 11, 2004

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1946, as amended, Steinberg. Sentencing.

Under existing law, a state prisoner who is diagnosed with a disease that would produce death within 6 months and whose release is deemed not to threaten the public safety may have his or her sentence recalled and be resentenced. Existing law additionally sets forth grounds under which the court has discretion to find that a prisoner is eligible for resentence or recall.

This bill would make prisoners who are diagnosed with a disease that would produce death within ~~12~~ 6 months, and whose release is deemed not to threaten public safety, eligible to have their sentences recalled and to be resentenced and would expand the grounds under which the court exercises discretion to find eligibility for resentencing or recall. This bill would also oblige a physician employed by the Department of Corrections who determines that a prisoner has ~~12~~ 6 months or less to live to inform the appropriate chief medical officer of that fact, and, if he or she concurs, would oblige the chief medical officer to inform the warden of that fact. This bill would also require the warden or the

warden's representative to inform a prisoner given that prognosis of the recall and resentencing procedures, and to arrange for the prisoner's designee to be informed of the prisoner's medical condition and prognosis, and of the procedures for recall and resentencing. This bill would require the warden or the warden's representative to contact a mentally unfit inmate's emergency contact and provide the contact with this information. This bill would also direct the warden or the warden's representative to keep the prisoner and the prisoner's designee apprised of the prisoner's medical condition and recall and resentencing proceedings. This bill would also provide that when a prisoner or his or her designee initiates recall and resentencing procedures, the chief medical officer and the warden or the warden's representative, if they find that the prisoner has ~~12~~ 6 months or less to live, shall, within 48 hours of their finding, inform the prisoner or his or her designee of the recall and resentencing procedures. This bill would also require release of a prisoner who is resentenced within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period, and would require that the prisoner be given his *or her* medical records, state identification, medications, and property at the time of release. Finally, this bill would require the Director of Corrections to issue a directive to Department of Corrections staff explaining recall and resentencing procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is amended to
2 read:
3 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. This purpose is
5 best served by terms proportionate to the seriousness of the offense
6 with provision for uniformity in the sentences of offenders
7 committing the same offense under similar circumstances. The
8 Legislature further finds and declares that the elimination of
9 disparity and the provision of uniformity of sentences can best be
10 achieved by determinate sentences fixed by statute in proportion
11 to the seriousness of the offense as determined by the Legislature
12 to be imposed by the court with specified discretion.



(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in

1 aggravation or mitigation of the crime. At least four days prior to
2 the time set for imposition of judgment, either party or the victim,
3 or the family of the victim if the victim is deceased, may submit
4 a statement in aggravation or mitigation to dispute facts in the
5 record or the probation officer's report, or to present additional
6 facts. In determining whether there are circumstances that justify
7 imposition of the upper or lower term, the court may consider the
8 record in the case, the probation officer's report, other reports
9 including reports received pursuant to Section 1203.03 and
10 statements in aggravation or mitigation submitted by the
11 prosecution, the defendant, or the victim, or the family of the
12 victim if the victim is deceased, and any further evidence
13 introduced at the sentencing hearing. The court shall set forth on
14 the record the facts and reasons for imposing the upper or lower
15 term. The court may not impose an upper term by using the fact
16 of any enhancement upon which sentence is imposed under any
17 provision of law. A term of imprisonment shall not be specified if
18 imposition of sentence is suspended.

19 (c) The court shall state the reasons for its sentence choice on
20 the record at the time of sentencing. The court shall also inform the
21 defendant that as part of the sentence after expiration of the term
22 he or she may be on parole for a period as provided in Section
23 3000.

24 (d) When a defendant subject to this section or subdivision (b)
25 of Section 1168 has been sentenced to be imprisoned in the state
26 prison and has been committed to the custody of the Director of
27 Corrections, the court may, within 120 days of the date of
28 commitment on its own motion, or at any time upon the
29 recommendation of the Director of Corrections or the Board of
30 Prison Terms, recall the sentence and commitment previously
31 ordered and resentence the defendant in the same manner as if he
32 or she had not previously been sentenced, provided the new
33 sentence, if any, is no greater than the initial sentence. The
34 resentence under this subdivision shall apply the sentencing rules
35 of the Judicial Council so as to eliminate disparity of sentences and
36 to promote uniformity of sentencing. Credit shall be given for time
37 served.

38 (e) (1) Notwithstanding any other law and consistent with
39 paragraph (1) of subdivision (a) of Section 1170, if the Director of
40 Corrections or the Board of Prison Terms or both determine that

1 a prisoner satisfies the criteria set forth in paragraph (2), the
2 director or the board may recommend to the court that the
3 prisoner's sentence be recalled.

4 (2) The court shall have the discretion to resentence or recall if
5 the court finds that the facts described in subparagraphs (A) and
6 (B) or subparagraphs (B) and (C) exist:

7 (A) The prisoner is terminally ill with an incurable condition
8 caused by an illness or disease that would produce death within ~~12~~
9 6 months, as determined by a physician employed by the
10 department.

11 (B) The conditions under which the prisoner would be released
12 or receive treatment do not pose a threat to public safety.

13 (C) The prisoner is medically incapacitated by a medical
14 condition that renders him or her permanently unable to move
15 without assistance, permanently unable to perform activities of
16 daily living such as dressing, eating, ambulating, or maintaining
17 personal hygiene without assistance, or permanently ~~ventilator~~
18 ~~dependent~~ *ventilator-dependent*.

19 The Board of Prison Terms shall make findings pursuant to this
20 subdivision before making a recommendation for resentence or
21 recall to the court. This subdivision does not apply to a prisoner
22 sentenced to death or a term of life without the possibility of
23 parole.

24 (3) Within 10 days of receipt of a positive recommendation by
25 the director or the board, the court shall hold a hearing to consider
26 whether the prisoner's sentence should be recalled.

27 (4) Any physician employed by the department who
28 determines that a prisoner has ~~12~~ 6 months or less to live shall
29 notify the chief medical officer of the prognosis. If the chief
30 medical officer concurs with the prognosis, he or she shall notify
31 the warden. Within 48 hours of receiving notification, the warden
32 or the warden's representative shall notify the prisoner of the recall
33 and resentencing procedures, and shall arrange for the prisoner to
34 designate a family member or other outside agent to be notified as
35 to the prisoner's medical condition and prognosis, and as to the
36 recall and resentencing procedures. If the inmate is deemed
37 mentally unfit, the warden or the warden's representative shall
38 contact the inmate's emergency contact and provide the
39 information described in paragraph (2).

1 (5) The warden or the warden's representative shall provide the
2 prisoner and his or her family member, agent, or emergency
3 contact, as described in paragraph (4), updated information
4 throughout the recall and resentencing process with regard to the
5 prisoner's medical condition and the status of the prisoner's recall
6 and resentencing proceedings.

7 (6) Notwithstanding any other provisions of this section, the
8 prisoner or his or her family member or designee may
9 independently request consideration for recall and resentencing by
10 contacting the chief medical officer at the prison or the Director of
11 Corrections. Upon receipt of the request, the chief medical officer
12 and the warden or the warden's representative shall follow the
13 procedures described in paragraph (4). If the director determines
14 that the prisoner satisfies the criteria set forth in paragraph (2), the
15 director or board may recommend to the court that the prisoner's
16 sentence be recalled. The director shall submit a recommendation
17 for release within 30 days in the case of inmates sentenced to
18 determinate terms and, in the case of inmates sentenced to
19 indeterminate terms, the director shall make a recommendation to
20 the Board of Prison Terms with respect to the inmates who have
21 applied under this section. The board shall consider this
22 information and make an independent judgment pursuant to
23 paragraph (2) and make findings related thereto before rejecting
24 the request or making a recommendation to the court. This action
25 shall be taken at the next lawfully noticed board meeting.

26 (7) Any recommendation for recall submitted to the court by
27 the Director of Corrections or the Board of Prison Terms shall
28 include one or more medical evaluations, a postrelease plan, and
29 findings pursuant to paragraph (2).

30 (8) If possible, the matter shall be heard before the same judge
31 of the court who sentenced the prisoner.

32 (9) If the court grants the recall and resentencing application,
33 the prisoner shall be released by the department within 48 hours
34 of receipt of the court's order, unless a longer time period is agreed
35 to by the inmate. At the time of release, the warden or the warden's
36 representative shall ensure that the prisoner has each of the
37 following in his or her possession: a discharge medical summary,
38 full medical records, state identification, parole medications, and
39 all property belonging to the prisoner. After discharge, any



1 additional records shall be sent to the prisoner's forwarding
2 address.

3 (10) The director shall issue a directive to medical and
4 correctional staff employed by the department that details the
5 guidelines and procedures for initiating a recall and resentencing
6 procedure. The directive shall clearly state that any prisoner who
7 is given a prognosis of ~~42~~ 6 months or less to live is eligible for
8 recall and resentencing consideration, and that recall and
9 resentencing procedures shall be initiated upon that prognosis.

10 (f) Any sentence imposed under this article shall be subject to
11 the provisions of Sections 3000 and 3057 and any other applicable
12 provisions of law.

13 (g) A sentence to state prison for a determinate term for which
14 only one term is specified, is a sentence to state prison under this
15 section.

